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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.165 OF 2004
IN
INSOLVENCY NOTICE NO.N/384 OF 2003

Re.:
Prasanna Govind Bhave & Ors. ...Judgment Debtors

Ex-parte:
The Bharat Co-operative Bank (Mumbai) Ltd. ...Judgment Creditor

Mr.S.A. Bhagwati, Advocate, i/b. Anjali Risbud, for Judgment Debtor No.2.

Mr.G.R. Mehta, Advocate, for the Judgment Creditor.

CORAM : ABHAY S. OKA, J.
DATED : 16TH OCTOBER, 2007.

P.C.:

1. Heard learned Counsel appearing for the parties. An insolvency notice which is the subject matter of this petition has been taken out on the basis of a recovery certificate issued under Section 101 of the Maharashtra Co-operative Societies Act, 1960.

2. In view of the decision of this Court dated 4th September, 2007 in Notice of Motion No.40 of 2007 (Re.Kishore K. Mehta) and other connected matters, an insolvency notice under Section 9(2) of the Presidency Towns Insolvency Act, 1909 could not have been taken out on the basis of a recovery certificate issued under

Section 101 of the said Act of 1960.

3. Therefore, even if the debtor fails to take steps for setting aside the insolvency notice within the time stipulated by law, no consequences will flow from the insolvency notice. Therefore, insolvency notice is set aside. Notice of Motion is accordingly made absolute.

[ABHAY S. OKA, J.]